

SENATE BILL No. 172

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-3.5.

Synopsis: Electronic recording of custodial interrogations. Requires state and local law enforcement agencies to record electronically custodial interrogations of suspects during felony investigations conducted after June 30, 2010. Requires the agencies to retain copies of custodial interrogations for certain periods. Provides that any statements made by a suspect that are in violation of the custodial interrogation requirements are inadmissible in a felony prosecution against the suspect. Provides for certain exceptions.

Effective: July 1, 2009.

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January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 172

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-33-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]:

4 **Chapter 3.5. Recording of Custodial Interrogations**

5 **Sec. 1. As used in this chapter, "custodial interrogation" means**
6 **an interrogation conducted by a law enforcement agency during**
7 **which:**

8 (1) a reasonable person being interrogated would consider
9 himself or herself to be in custody; and

10 (2) a question is asked that is reasonably likely to elicit an
11 incriminating response from the person.

12 **Sec. 2. As used in this chapter, "record electronically" means to**
13 **make a record of:**

14 (1) sounds by using audio electronic equipment; or

15 (2) visual images and sounds by using video and audio
16 electronic equipment.

17 **Sec. 3. As used in this chapter, "law enforcement agency" means**

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an agency or a department of any level of state or local government whose principal function is the apprehension of criminal offenders.

Sec. 4. After June 30, 2010, a law enforcement agency shall record electronically all custodial interrogations:

- (1) of suspects involved in felony investigations; and
- (2) that occur:

(A) at:

- (i) a law enforcement agency station house; or
 - (ii) any other building owned or operated by the law enforcement agency;
- at which persons are detained in connection with criminal investigations; or

(B) at any other place where the suspect is detained in connection with the felony investigation.

Sec. 5. A law enforcement agency shall retain a copy of a custodial interrogation of a person recorded electronically under this chapter until:

- (1) if the person is convicted of a felony, the:
 - (A) person's conviction is final; and
 - (B) person has exhausted all direct and habeas corpus appeals related to the conviction; or
- (2) a prosecution of the person for a felony is barred by law.

Sec. 6. (a) A custodial interrogation recorded electronically under this chapter is:

- (1) confidential; and
- (2) exempt from disclosure under IC 5-14-3.

(b) This section does not preclude:

- (1) the state or a defendant in a criminal action from obtaining a copy of a custodial interrogation recorded electronically under this chapter for use in:

- (A) the criminal action; or
- (B) an appeal related to the criminal action; or

(2) a party in a civil suit from obtaining a copy of a custodial interrogation recorded electronically under this chapter for use in:

- (A) the civil suit; or
- (B) an appeal related to the civil suit.

Sec. 7. (a) Except as provided in subsection (b), if a court finds by a preponderance of the evidence that a suspect in a felony investigation was subjected to a custodial interrogation:

- (1) after June 30, 2010; and
- (2) that violated this chapter;

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any statements made by the suspect during or following the interrogation are inadmissible in the felony prosecution against the suspect.

(b) This chapter does not preclude the admission in any action of the following statements:

(1) A statement made by a defendant:

(A) in open court at the defendant's trial;

(B) before a grand jury; or

(C) at a preliminary hearing.

(2) A statement made during a custodial interrogation that was not recorded as required by this chapter because electronic recording was not feasible.

(3) A voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of a person as a witness.

(4) A spontaneous statement that is not made in response to a question.

(5) A statement made after questioning that is routinely performed during the processing of the arrest of a suspect.

(6) A statement made during a custodial interrogation by a suspect who requests, before making a statement, that the statement not be recorded electronically. However, the suspect's request under this subdivision must be electronically recorded.

(7) A statement made during a custodial interrogation that is conducted outside Indiana.

(8) A statement given at a time when the interrogator is not aware that a felony has occurred.

(9) Any other statement that may be admissible under law.

The state has the burden of proving by a preponderance of the evidence that a statement is admissible under this subsection.

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